United Nations E/CN.15/2001/9

Economic and Social Council

Distr.: General
4 April 2001

Original: English

Commission on Crime Prevention and Criminal Justice
Tenth session
Vienna, 8-17 May 2001
Item 7 of the provisional agenda*
United Nations standards and norms in crime prevention and criminal justice

Use and application of United Nations standards and norms in crime prevention and criminal justice

Report of the Secretary-General

Summary

The present report of the Secretary-General was prepared for submission to the Commission on Crime Prevention and Criminal Justice at its tenth session, in pursuance of various General Assembly and Economic and Social Council resolutions. It provides an overview of the work done by the Centre for International Crime Prevention of the Office for Drug Control and Crime Prevention of the Secretariat to promote the use and application of United Nations standards and norms in crime prevention and criminal justice. It reviews the process of information-gathering and analysis conducted by the Secretary-General through 12 surveys on existing international instruments and on standard-setting activities designed to facilitate the drafting of new international instruments. It also offers suggestions to the Commission regarding the current and future programme of work of the Centre in promoting United Nations standards and norms in crime prevention and criminal justice.

* E/CN.15/2001/1.

V.01-82523 (E) 300401 020501

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I. Introduction

1. The present report was prepared for submission to the Commission on Crime Prevention and Criminal Justice at its tenth session, in pursuance of Economic and Social Council resolutions 1993/34 section III, of 27 July 1993, 1997/32, of 21 July 1997, and 1998/21, of 28 July 1998, concerning United Nations standards and norms in crime prevention and criminal justice, and in accordance with General Assembly resolutions 40/34, of 29 November 1985, and 52/86, of 12 December 1997, as well as Economic and Social Council resolutions 1996/12 and 1996/14, of 23 July 1996, 1997/31 and 1997/33, of 21 July 1997, 1999/25, of 28 July 1999, and 2000/14 and 2000/15, of 27 July 2000.

2. The present report provides an overview of the work done by the Centre for International Crime Prevention of the Office for Drug Control and Crime Prevention of the Secretariat to promote the use and application of United Nations standards and norms in crime prevention and criminal justice. It reviews the results of three surveys conducted by the Secretary-General through questionnaires designed by the Centre to ascertain the use and application of the following three international instruments: Basic Principles on the Role of Lawyers;[1] Guidelines on the Role of Prosecutors,[2] and United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules) (General Assembly resolution 45/110, annex). It also informs the Commission of the progress achieved in the continuing survey efforts of the Secretary-General regarding the use and application of the following two additional international instruments: Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice (resolution 52/86, annex); and Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (resolution 40/34, annex).

3. The present report includes a preliminary analysis of survey results relating to the following three international instruments, about which the Secretary-General will report in full to the Commission at its eleventh session: United Nations Declaration against Corruption and Bribery in International Commercial Transactions (General Assembly resolution 51/191, annex); International Code of Conduct for Public Officials (resolution 51/59, annex); and United Nations Declaration on Crime and Public Security (resolution 51/60, annex). It also covers the progress achieved in standard-setting, in particular with regard to the possible drafting of new international instruments on restorative justice and on elements of responsible crime prevention.

4. For its consideration of item 7, the Commission will have before it the sixth quinquennial report of the Secretary-General on capital punishment and implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty (E/CN.15/2001/10), the report of the Secretary-General on elimination of violence against women (A/54/69-E/1999/8 and Add.1), the report of the expert working group on the proposed establishment of an international fund for support to victims of transnational crime (E/CN.15/2000/CRP.3) and other relevant material to facilitate its deliberations on various issues.

5. The Secretary-General did not present reports to the Commission at its ninth session on survey results relating to the implementation of the Basic Principles on the Role of Lawyers, the Guidelines on the Role of Prosecutors and the United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules), as a sufficient number of government replies to the surveys had not been received in time. The Commission at its ninth session decided to consider the implementation of those instruments at its tenth session. Consideration of survey results relating to the United Nations Declaration on Crime and Public Security, the International Code of Conduct for Public Officials and the United Nations Declaration against Corruption and Bribery in International Commercial Transactions was deferred by the Commission to its eleventh session.[3] The Commission also deferred consideration of the report of the Secretary-General on progress achieved regarding juvenile justice reform (E/CN.15/2000/5). That report constituted a policy and position paper, outlined the results of a survey on juvenile justice reform, and served as the mandated second biannual report on the implementation of juvenile justice standards. The Commission further deferred consideration of the issues of restorative justice and penal reform, the latter in the context of the relevant international instruments.[4] In addition, it was decided that the theme of the eleventh session of the

Commission would be "Criminal justice administration reform".

6. Pursuant to Council resolution 1998/21, section I, paragraph 2, updated reports on survey results are to be prepared where at least 30 additional States have replied in respect of a standard or norm on which a report has already been submitted. In accordance with the Commission's decisions on strategic management, the bureau of the Commission decides which reports are to be submitted orally instead of in writing. Less than 30 Governments participated in the surveys on the use and application of the Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice, the Declaration of Basic Principles of Justice for Victims of Crime and the Abuse of Power and the draft text of elements of responsible crime prevention. The present report therefore briefly reviews the survey results, in consolidated fashion, in accordance with the strategic management decisions of the Commission and Council resolution 1998/21.

II. Background and perspectives

7. Setting and implementing standards in crime prevention and criminal justice have constituted one of the main areas of work of the Centre (and of its predecessors) since efforts in that field began over 40 years ago. Through a series of resolutions, legislative bodies have adopted international instruments and established a significant body of legal documents, within the framework of the United Nations, dealing with a wide range of issues. Various resolutions have also affirmed the important role of the Secretary-General in promoting the use and application of United Nations standards and norms in crime prevention and criminal justice.[5]

8. The General Assembly, in its resolution 46/152, of 18 December 1991, on the creation of an effective United Nations crime prevention and criminal justice programme, defined a general set of goals, including more efficient and effective justice administration based on respect for the human rights of all those affected and on the highest standards of fairness, humanity, justice and professional conduct. The Council, in its resolution 1994/18 of 25 July 1994, reaffirmed the important contribution that the use and application of United Nations standards and norms in crime prevention and criminal justice make to criminal justice systems.

9. Those resolutions have spelled out the role and functions of the Secretary-General as the custodian and repository of standards and norms in crime prevention and criminal justice and in implementing existing, and elaborating new, instruments in that field.[6] Under those resolutions, the Secretary-General was requested to begin a process of gathering information and establishing a data base, to be undertaken by means of surveys, on the use and application of various international instruments, and to report to the Commission thereon. The Secretary-General was also requested to review, as appropriate, the issue of standard-setting and the possible drafting of new international instruments.

10. On the recommendation of the Commission, the Council selected certain instruments and established the timing and pattern of surveying and reporting to the Commission, in accordance with established priorities. On that basis, the Centre has focused on gathering information on the use and application of existing instruments, on the desirability and usefulness of standard-setting or the drafting of new international instruments, and on the precepts and principles to be embodied in those instruments.

11. Twelve surveys have been conducted and five new methodological instruments or questionnaires designed by the Centre, from 1999 to 2001, on a variety of issues relating to standards and norms. Ten surveys were conducted on the use and application of existing instruments and two on the drafting of new instruments on restorative justice and on elements of effective crime prevention.

12. In its 10 surveys on existing instruments, the Centre focused on assessing the following: profiles of criminal justice systems vis-à-vis the instruments concerned; the nature and extent of application of the provisions of the instruments; the departure of the laws, policies, procedures and practices of criminal justice systems from the provisions of the instruments; obstacles to implementation; the role, status and impact of the international instruments; modalities by which to promote coordinated use and application; areas in need of technical advisory services and activities; the distribution and management of information; more effective information-gathering and reporting systems; and areas in need of new standard-setting activity.

13. United Nations policy, standards and norms in crime prevention and criminal justice have been established and expressed in the form of declarations, guidelines, plans and programmes of action, model instruments, measures and rules, and are embodied in the normative material published by the Centre. The basic texts are contained in *Compendium of United Nations Standards and Norms in Crime Prevention and Criminal Justice*,[7] for which a mandate for revision has been given to the Centre. They also take the form of manuals, resource books and guides, to which will be added, during 2001, a manual on anti-corruption policy and a kit against corruption, to be developed by the Global Programme against Corruption. The kit will be published both in hard copy and electronically, on the web site of the Office for Drug Control and Crime Prevention (http://www.odccp.org).

14. The United Nations has developed a composite body of international instruments in the field of crime prevention and criminal justice. The new instruments envisaged in that field, for example, that relating to restorative justice, would complement the earlier work, should the Commission so decide and should the Secretary-General be in a position to continue the standard-setting process. The United Nations Convention against Transnational Organized Crime (General Assembly resolution 55/25, annex I) and the protocols thereto, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and the Protocol against the Smuggling of Migrants by Land, Sea and Air (resolution 55/25, annexes II and III), have been added to the arsenal of United Nations standards in crime prevention and criminal justice. The draft Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition has also been finalized and submitted to the General Assembly for consideration and adoption. The process of drafting a legal instrument against corruption will soon begin, leading to the emergence of a body of legally binding instruments to add to the repository of non-binding standards and norms providing the legal and normative basis for international criminal policy.

15. The policy precepts of existing non-binding instruments have paved the way for the adoption of binding standards and norms within the framework of the United Nations and for their implementation by States through improved laws, policies and practices. On the basis of those precepts, obstacles to the implementation of the binding instruments (conventions and protocols) may be identified and possibly overcome. The system of information-gathering and profiling established by the Centre has to some extent shed light on departures from international standards and norms in cases involving, for example, distinctions between acts committed by adults and juveniles, sanctioning, prison administration, treatment of and support for victims, bribery of public officials, codes of conduct for public officials and the operation of the criminal justice system, including the performance of prosecutors, lawyers and the judiciary. Although the binding and non-binding tools at the disposal of the United Nations have a fundamentally different legal status, the existence of the set of tools (individually and jointly) facilitates reform. The Centre has undertaken to examine ways of ensuring that the instruments available in the arsenal of standards and norms will be mutually reinforcing.

16. The Centre has adopted a new conceptual approach to standards and norms, the so-called clustered approach, which aims at reform in the administration of justice. Such an approach fosters the upgrading and strengthening of professional performance and of the capacity for effective crime prevention, while at the same time safeguarding human rights and promoting the use and application of instruments and precepts as universal benchmarks below which Governments should not fall. It distinguishes between various aspects developed by the instruments, including the following: substantive criminological issues (for example, fair treatment, gender mainstreaming, human rights, children's rights, bribery and corruption and public security); specific areas of concern (for example, women, victims and juvenile justice); criminal justice processes (for example, sanctioning, law enforcement and prevention); sector issues (for example, the courts and prison administration); and the conduct of professionals (for example, prosecutors, lawyers, police and the judiciary). The new approach will facilitate the setting of priorities for follow-up activities that can be focused on common themes rather than on individual instruments as such.

17. The Centre continued to set and advance United Nations criminal policy. At the same time, from its own unique programme perspective, the Centre made significant contributions to the development of United Nations policy and action, in particular in areas

of system-wide and priority concern (for example, human rights, gender affairs, children's rights and refugees). The Centre continued its close association and collaborative ties with the Division for the Advancement of Women, the Office of the United Nations High Commissioner for Refugees, the Office of the United Nations High Commissioner for Human Rights of the Department of Economic and Social Affairs and the United Nations Children's Fund. It maintained its outreach efforts with other relevant intergovernmental organizations and a wide range of non-governmental organizations. It continued to mobilize and promote cooperation with entities and networks at the intergovernmental, regional and subregional levels, including through the institutes comprising the United Nations Crime Prevention and Criminal Justice Programme network.

18. The Centre will undertake important work at the policy and field levels as it begins to implement the Vienna Declaration on Crime and Justice: Meeting the Challenges of the Twenty-first Century, adopted by the Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Vienna from 10 to 17 April 2000.[8] It will do so in the context of its own plans of action, bearing in mind the provisions of the Declaration relating to standards and norms in crime prevention and criminal justice.[9] A revision of *Compendium of United Nations Standards and Norms in Crime Prevention and Criminal Justice* will be an important part of the work undertaken.

III. Gathering information on the use and application of United Nations standards and norms in crime prevention and criminal justice

19. In pursuance of resolutions 1993/34, 1997/32 and 1998/21, 12 global surveys on the use and application of United Nations standards and norms in crime prevention and criminal justice were conducted during the period 1999-2000. Seven of the 12 surveys required the design of elaborate methodological approaches and tools (questionnaires) to determine system profiles and the impact of the relevant instruments. The three remaining surveys were initiated by sending notes verbales to Governments and circular letters to all relevant institutions (intergovernmental and non-governmental organizations, the United Nations Crime Prevention and Criminal Justice Programme network and other United Nations entities). The questionnaire designed for the sixth quinquennial survey on capital punishment and implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty was an innovative one, for the first time incorporating race, ethnicity and religion as factors in addition to age and gender. It also refined the classification schemes established for the quinquennial surveys and reports on the death penalty.

20. Nine of the surveys concerned the use and application of the following international instruments: Basic Principles on the Role of Lawyers; Guidelines on the Role of Prosecutors; United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules); International Code of Conduct for Public Officials; United Nations Declaration against Corruption and Bribery in International Commercial Transactions; United Nations Declaration on Crime and Public Security; Declaration on Basic Principles of Justice for Victims of Crime and Abuse of Power; Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice; United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) (General Assembly resolution 40/33, annex, of 29 November 1985); United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines) (resolution 45/112, annex, of 14 December 1990); and United Nations Rules for the Protection of Juveniles Deprived of their Liberty (resolution 45/113, annex, of 14 December 1990).

21. Two surveys dealt with the possible drafting of new international instruments on restorative justice and on elements of effective crime prevention. One survey was the sixth quinquennial survey on capital punishment and implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty.

22. Survey results regarding the Tokyo Rules and the instruments governing the role of lawyers and the role of prosecutors are covered in the present report. Survey results concerning the use and application of the Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice and the Declaration on Basic Principles of Justice for Victims of Crime and

Abuse of Power and the drafting of a new international instrument on elements of effective crime prevention did not meet the criteria for the preparation of updated reports and are also covered in the present report. The report of the Secretary-General on the sixth quinquennial survey on capital punishment is before the Commission in document E/2001/10, after having been submitted to the Commission on Human Rights.

23. Survey results regarding the International Code of Conduct for Public Officials, the United Nations Declaration on Crime and Public Security and the United Nations Declaration against Corruption and Bribery in International Commercial Transactions will be reported to the Commission at its eleventh session. Survey results regarding the possible drafting of a new international instrument on restorative justice will be submitted to the Commission at its eleventh session, in addition to a report on the possible drafting of a new instrument on elements of effective crime prevention, if requested by the Commission. Juvenile justice reform in line with the instruments governing juvenile justice will be considered by the Commission at its eleventh session, together with the issues of penal reform and restorative justice, in the context of reform of the justice administration.

A. Surveys on existing international instruments

1. United Nations Declaration on Crime and Public Security

24. Thirty-seven States have thus far participated in the survey on implementation of the United Nations Declaration on Crime and Public Security, carried out in accordance with General Assembly resolution 51/60 and Council resolution 1997/34.

25. The following States submitted replies: Algeria, Angola, Australia, Austria, Belarus, Bulgaria, Croatia, Czech Republic, Estonia, Finland, Germany, Greece, Iceland, Iraq, Ireland, Japan, Jordan, Kuwait, Madagascar, Mongolia, Morocco, New Zealand, Norway, Philippines, Poland, Portugal, Qatar, Republic of Korea, Slovakia, South Africa, Swaziland, Sweden, Syrian Arab Republic, Tajikistan, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland and United States of America. The following entities within the United Nations system have thus far submitted replies: Office of Legal Affairs; Office of the United Nations High Commissioner for Refugees; United Nations Environment Programme; Office of the United Nations High Commissioner for Human Rights; United Nations University; and International Labour Organization. Replies have also been received from the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders, the European Police Office (Europol) and the International Federation of Red Cross and Red Crescent Societies.

26. Analysis of the survey results is being undertaken by the Centre in cooperation with the National Institute of Justice of the United States Department of Justice, which is one of the institutes of the United Nations Crime Prevention and Criminal Justice Programme network. As recommended at the ninth session of the Commission,[10] survey results will be reported to the Commission at its eleventh session. Given the comprehensive nature of the responses received thus far, a separate report would be warranted.

2. United Nations Declaration against Corruption and Bribery in International Commercial Transactions

27. Forty-five States have thus far participated in the survey on the United Nations Declaration against Corruption and Bribery in International Commercial Transactions, conducted pursuant to Council resolution 1998/21. The following States have submitted replies: Algeria, Argentina, Austria, Belarus, Brazil, Brunei Darussalam, Bulgaria, Cameroon, Canada, Colombia, Costa Rica, Croatia, Czech Republic, Germany, Greece, Guatemala, Guyana, Iraq, Italy, Japan, Kazakhstan, Lebanon, Lithuania, Luxembourg, Mali, Malta, Mauritius, Myanmar, New Zealand, Niger, Nigeria, Norway, Panama, Peru, Poland, Saudi Arabia, Singapore, Slovenia, South Africa, Sweden, Switzerland, The former Yugoslav Republic of Macedonia, United Arab Emirates, United Kingdom and Yemen. As recommended at the ninth session of the Commission, survey results will be submitted in a consolidated report of the Secretary-General to the Commission at its eleventh session.

3. International Code of Conduct for Public Officials

28. Fifty-three States have thus far participated in the survey on the International Code of Conduct for Public Officials, conducted pursuant to Council resolution 1998/21. The following States have submitted replies: Algeria, Angola, Antigua and Barbuda, Argentina, Bangladesh, Belarus, Belgium, Bolivia, Brunei Darussalam, Canada, Central African Republic, Chile, Colombia, Congo, Costa Rica, Cuba, Cyprus, Czech Republic, Dominican Republic, Ecuador, Egypt, El Salvador, Finland, Germany, Greece, Guatemala, Guyana, Haiti, Hungary, Iraq, Italy, Japan, Lebanon, Lithuania, Malaysia, Mali, Malta, Mexico, Myanmar, New Zealand, Norway, Panama, Peru, Poland, Qatar, Republic of Korea, Saudi Arabia, Slovenia, South Africa, Sweden, Switzerland, Thailand and Uruguay. As recommended at the ninth session of the Commission, survey results will be submitted in a consolidated report of the Secretary-General to the Commission at its eleventh session.

4. Capital punishment

29. The Commission at its tenth session will have before it the sixth quinquennial report of the Secretary-General on capital punishment and implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty (E/CN.15/2001/10), prepared in accordance with Council resolutions 1745 (LIV) of 16 May 1973 and 1995/57 of 28 July 1995 and Commission on Human Rights resolution 1999/61.

30. The sixth quinquennial survey was based on a new questionnaire designed by the Centre. The report of the Secretary-General is an updated version of a report submitted to the Commission on its ninth session (E/CN.15/2000/3), the consideration of which was deferred to the tenth session to enable States that had not yet done so to participate in the survey and to incorporate the additional information in a revised report. The report before the Commission presents survey results based on information received from 63 States, including 18 additional replies, as well as research-based supplementary data. It covers the period 1994-1998, and has been extended to include 1999-2000.

5. Elimination of violence against women

31. Measures aimed at the elimination of violence against women are contained in the Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice and in Council resolution 1996/12. A series of reports relating to the drafting (E/CN.15/1996/11 and E/CN.15/1997/12) and implementation (A/54/69-E/1999/8 and Add.1) of the Model Strategies and Practical Measures has already been submitted to the Commission.

32. The Commission at its ninth session called for a separate report on the issue to be submitted at its tenth session. In pursuance of Assembly resolution 52/86 and Council resolution 1996/12, a second survey was conducted among States and relevant organizations concerning the application of the Model Strategies and Practical Measures and more effective, coordinated ways to eliminate violence against women. It focused on measures of implementation in addition to those reflected in the report of the Secretary-General on elimination of violence against women (A/54/69-E/1999/8 and Add.1), which is before the Commission as a background document.

33. The following States submitted replies to the second survey on the elimination of violence against women: Argentina, Azerbaijan, Belarus, Cameroon, Costa Rica, Czech Republic, France, Germany, Japan, Malta, Peru, Philippines, Qatar, Spain, Sweden and United States. The following organizations also submitted replies: Afro-Asian Peoples' Solidarity Organization; Australian Institute of Criminology; European Commission; International Criminal Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991; International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994; International Council of Women; National Institute of Justice of the United States Department of Justice; Pax Romana (International Catholic Movement for Intellectual and Cultural Affairs) (International Movement of Catholic

Students); Soroptimist International Association; and the United Nations Interregional Crime and Justice Research Institute (UNICRI).

34. Although the number of replies to the second survey is admittedly low, those submitted continued to express strong support for the elimination of violence against women in all its forms.

35. Governments reported making strenuous and wide-ranging efforts to eliminate violence against women, guided by the Model Strategies and Practical Measures and by the Beijing Declaration[11] and the Platform for Action,[12] adopted at the Fourth World Conference on Women, held in Beijing in 1995. The views expressed indicated a continuing commitment to reform aimed at eliminating violence against women, as called for by those instruments and as reflected in the report of the Secretary-General contained in document A/54/69-E/1999/8 and Add.1. In general, Governments continued to initiate and strengthen a wide range of legislative and other measures and organizations were carrying out both ongoing and new activities designed to eliminate violence against women.

36. Governments continually renewed their commitment to the goals and objectives set at the Fourth World Conference on Women, in particular through the Beijing Declaration and the Platform for Action, a substantial part of which has to do with eliminating gender-directed criminal violence which, by definition, includes abuse and exploitation of and trafficking in women and the girl child. Financial support for measures to combat violence against women appeared to be increasing, although developing countries continued to report shortages of facilities, services and personnel to deal with criminal justice issues. For the most part, they expressed the view that more consistent, systematic and coordinated efforts, at the policy as well as the practical levels, should be made both within and outside the United Nations system, to eliminate such gender- and age-directed criminality. It was agreed that as many organizations as possible should cooperate in institutional capacity-building to combat violence against women, while, at the same time, advancing the rights and status of women and introducing gender mainstreaming in all fields.

37. The Model Strategies and Practical Measures built upon the measures included in the Platform for Action and derived their broad definition of violence against women from the Declaration on the Elimination of Violence against Women (General Assembly resolution 48/104 of 20 December 1993). The Model Strategies and Practical Measures constitute an instrument aimed, in the first instance, at the deterrence and prevention of all types of criminal violence perpetrated against women and girls. To that end, it provides guidance to States as to the upgrading of the response on the part of their justice systems to gender- and age-directed violence in all its forms. It is also an instrument that promotes the fair treatment and rights of women, gender equality and equal access to justice, as well as gender mainstreaming and integrating a perspective of gender fairness within justice administration across legal systems.

38. Indeed, the Model Strategies and Practical Measures have proven their usefulness as a new international instrument to promote the achievement of those aims. There is sufficient evidence of this worldwide, in addition to the replies received to that effect from Governments and various organizations. It may be due to the policy-oriented and practical nature of the instrument. The momentum generated by the Fourth World Conference on Women gave added impetus to the application of the provisions of the instrument. It has been accepted and to a large extent applied by a substantial number of States. It has provided useful guidance for pursuing system modifications relating to the deterrence and criminalization of violence against women. The Model Strategies and Practical Measures became widely known in a relatively short time. The work undertaken by various entities within and outside the United Nations system is also evidence of the interest and involvement of Governments in the subject matter in the wake of the Fourth World Conference on Women. The Model Strategies and Practical Measures have served as the basis for that work. However, there still remains a substantial number of States that lack sufficient means to move towards the proscriptive provisions of the Model Strategies and Practical Measures. In fact, much work remains to be done in providing technical advisory support in that regard.

39. The Protocol against the Smuggling of Migrants by Land, Sea and Air and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, provided an important new normative

framework for action against violence against women. They also provided orientation for the Global Programme against Trafficking in Human Beings, launched by the Centre in March 1999. In so far as the protocols call for the criminalization of trafficking in human beings and emphasizes victim support and witness protection, important new ways have been universally agreed upon to combat violence against women. More resources would be needed, however, to enable the Global Programme to render the advisory and operational services required of Governments in this area. While the Global Programme has now started to build a capacity to render assistance to Governments in its own area of competence, it nevertheless requires far more funding to meet the needs of States in terms of trafficking in women and children.

40. The Commission may wish to consider the progress achieved in the use and application of the instrument and what types of legislative action would invite further application of its provisions, in particular in the crucial areas of deterrence, criminalization and sanctioning of violence against women in all its forms, so as to make a discernible impact on that form of gender- and age-directed criminality.

6. Victims of crime and abuse of power

41. On the recommendation of the Commission on its ninth session, the Council adopted resolution 2000/15, entitled "Implementation of the Basic Principles of Justice for Victims of Crime and Abuse of Power", in which the Secretary-General was requested to prepare a report on possible ways and means of providing adequate assistance to initiatives in the area of victim care. Pursuant to that resolution, as well as to Council resolutions 1996/14, of 23 July 1996, 1997/31, 1998/21 and 2000/14 and General Assembly resolution 40/34, of 29 November 1985, a survey was conducted on action taken by Governments and relevant organizations to give effect to the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. The survey also addressed possible ways and means of providing adequate assistance to initiatives in the area of victim care, taking into account existing mechanisms providing such assistance and the report of the working group of experts on the matter, before the Commission in document E/CN.15/2000/CRP.3.

42. Survey results appear to indicate that, in recent years, significant momentum and reform have been generated in respect of the role, status and care of victims. They point to the need to review not only the legislative history, but also the work done and progress achieved, in accordance with the United Nations standards and norms, on behalf of victims, as well as their role, status, care and protection, worldwide and across legal systems. A considerable amount of work remains to be done in implementing existing mandates before enacting legislation and undertaking additional tasks on the basis of new mandates. For example, the plan of action adopted by the Council and contained in the annex to its resolution 1998/21 has a number of components on which much needs to be done in the following areas: capacity-building; research and the gathering and exchange of information; and the prevention of victimization. The plan of action further spells out a number of steps to be taken, including action at the regional and international levels and coordination of relevant initiatives.

43. The United Nations Convention against Transnational Organized Crime and the protocols thereto are important new legally binding means by which the status of victims will become more prominent internationally. They have brought forth international standards and norms, in addition to those embodied in the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, that will strengthen the essential elements of the Declaration regarding the role, status and rights of and support for victims of crime. The practical work of the Centre that will be generated with the birth of those additional standards applicable to crime victims is likely to exemplify the manner in which laws, policies, procedures and practices might be pursued by Governments. The Global Programme against Trafficking in Human Beings deals with the victims of trafficking in human beings in line with the Declaration and the protocols to the Convention.

44. The following States submitted replies to the survey on implementation of the Declaration: Belarus, Denmark, Germany, Ireland, Malta, Mexico, Peru, Qatar, Sweden and Turkey. Replies were also submitted by the Economic Commission for Africa and by the following organizations: Australian Institute of Criminology; European Commission; European Forum for Victim Services; International Centre for Criminal Law Reform and Criminal Justice Policy; International Institute of Higher Studies in Criminal Sciences; International Criminal Tribunal for the Prosecution of

Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991; International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committeed in the Territory of Neighbouring States between 1 January and 31 December 1994; National Institute of Justice of the United States Department of Justice; Pax Romana (International Catholic Movement for Intellectual and Cultural Affairs) (International Movement of Catholic Students); UNICRI; and World Muslim Congress.

45. The issue of the creation of an international fund for victims of crime and abuse of power was raised by the Council in its resolution 1998/21. In that resolution, the Secretary-General was requested to seek the views of States on the desirability and feasibility of establishing such a fund and to convene a working group of experts on this matter. The fund was to support the following: (a) technical assistance to develop and/or strengthen victim support services and organizations; (b) specific projects and activities; (c) awareness campaigns on victim rights and crime prevention; (d) eligible victim claims resulting from international and transnational crime, where national avenues of recourse and/or redress are unavailable or insufficient.

46. The Commission has before it the report of a working group of experts on the possible establishment of a fund for victims of crime and abuse of power (E/CN.15/2000/CRP.3).

47. One of the findings of the working group was that there is a need to provide adequate assistance to initiatives in the area of victim care. The working group endorsed the creation of an international fund and made a specific proposal for the establishment of an international fund for support to victims of transnational crime.

48. The working group was of the view that the creation of such a fund would give a clear signal to Governments and victims, in particular those most vulnerable, such as victims of trafficking in human beings and of sex tourism. The working group made a number of suggestions along the lines of some of the goals for the fund indicated in Council resolution 1998/21. It suggested that an international fund be established to support the following goals: (a) development and/or strengthening of victim support services through technical assistance; (b) elaboration of measures for special victim types or groups, in particular with regard to transnational crime; and (c) design of international awareness-raising campaigns promoting the rights of victims and effective crime prevention.

49. The working group recommended the establishment of a governing board for the proposed fund, with due representation of developing countries, donors (public and private) and victim support groups and experts, as well as the Centre. With regard to operational modalities, the working group felt that the fund should be established within a relatively short period of time, as a subaccount of the United Nations Crime Prevention and Criminal Justice Fund. This would be one way of lending United Nations affiliation and status to the proposed fund. It is suggested that United Nations field-based offices, especially those of the Office for Drug Control and Crime Prevention, operate as intermediaries between the administration of the fund and the applicants.

50. Both public and private funding for the fund should be possible. The responsibility for and decision about project funding should rest with the governing board. While the fund would initially require financial support sufficient to grant 250,000 United States dollars ($) for at least five projects per year, it should increase incrementally over subsequent years. The board should also formulate criteria and priorities for an objective assessment and allotment of grants. The fund should operate at low cost in order to be of maximum benefit to victim support. Criteria governing applicants and the assessment of grants considered by the board were suggested by the working group.

51. The proposed fund would be another step in the direction of United Nations action in support of victims. It would also help Governments in their efforts at preventing victimization and caring for and assisting victims of crime. United Nations assistance in that regard, involving experts on and advocates of victim rights, could be given through projects supported by contributions of interested parties. With such a mechanism in place, supportive action at the field level could be provided.

7. Juvenile justice reform

52. A report of the Secretary-General on juvenile justice reform was submitted to the Commission at its ninth session (E/CN.15/2000/5), in accordance with Council resolutions 1997/30, 1998/21 and 1999/28, as well as General Assembly resolutions 40/33, 40/34 and 42/35. The report brought to the attention of the Commission the results of a survey of the implementation of the above-mentioned resolutions, including ways in which all concerned entities might together work more effectively and coordinate their efforts to effect juvenile justice reform. The Commission at its ninth session decided to defer consideration of the matter and the report to its eleventh session, under an item on the topic of criminal justice reform.[10]

8. Penal reform

53. A number of Council resolutions deal with the issue of penal reform, including the following: resolutions 1997/27, 1997/33, 1997/36, 1998/21, 1998/23 and 1999/25. The international instruments relevant in this regard are the following: Standard Minimum Rules for the Treatment of Prisoners;[13] procedures for the effective implementation of the Standard Minimum Rules for the Treatment of Prisoners (Council resolution 1984/47, annex, of 25 May 1984); Model Agreement on the Transfer of Foreign Prisoners and recommendations on the treatment of foreign prisoners;[14] Basic Principles for the Treatment of Prisoners (General Assembly resolution 45/111, annex, of 14 December 1990); United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules); Model Treaty on the Transfer of Supervision of Offenders Conditionally Sentenced or Conditionally Released (General Assembly resolution 45/119, annex, of 14 December 1990); United Nations Rules for the Protection of Juveniles Deprived of their Liberty; United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules); Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (General Assembly resolution 39/46, annex, of 10 December 1984); and Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment (General Assembly resolution 43/173, annex, of 9 December 1988).

54. Other instruments relevant to prison reform are the following: Kampala Declaration on Prison Conditions in Africa (Council resolution 1997/36, annex, of 21 July 1997); Kardoma Declaration on Community Service (Council resolution 1998/23, annex I, of 28 July 1998); and Arusha Declaration on Good Prison Practice (Council resolution 1999/27, annex, of 28 July 1999). At its ninth session, the Commission decided to defer consideration of the issue of penal reform to its eleventh session, which will be devoted to criminal justice administration.[10] A new survey would be conducted on that subject, should the Commission so decide.

B. Standard-setting and continuing surveys on the drafting of new international instruments

1. Elements of responsible crime prevention

55. The Commission at its ninth session included a report of the Secretary-General on elements of responsible crime prevention in the proposed documentation for its tenth session. In pursuance of Council resolutions 1997/33 and 1999/25, the Secretary-General conducted a second survey on the possible drafting of a new international instrument on elements of responsible crime prevention. The survey involved a review of and proposals on the most recent text of the draft elements, contained in document A/CONF.187/7, on the text annexed to Council resolution 1997/33, and on the guidelines for cooperation and technical assistance in the field of urban crime, adopted by Council resolution 1995/9, of 24 July 1995. It invited suggestions as to the desirability and usefulness of drafting such a new international instrument.

56. The survey also called for suggestions as to ways in which provisions of the new United Nations Convention against Transnational Organized Crime and the protocols thereto might be seen as relevant to the process of drafting the new instrument. In that process, it would be useful to find ways in which the provisions of those instruments might be reflected in the provisions of the new instrument on responsible crime prevention, in particular with regard to the prevention of organized crime. Particular reference in that regard is made to article 31 of the Convention, on prevention, and to Convention articles 5 to 18 and 26 to 29, in the

context of the overall framework and scope set out in articles 1 to 4.

57. Of particular relevance to the issue are the following reports, which have been made available to the Commission: working paper prepared by the Secretariat on effective crime prevention: keeping pace with new developments (A/CONF.187/7); report of the Secretary-General on crime prevention (E/CN.15/1993/3); and the report of the Expert Group Meeting on Community Involvement in Crime Prevention, held in Buenos Aires from 8 to 10 February 1999 (E/CN.15/1999/CRP.1). Council resolutions 1997/33 and 1995/9 are also essential texts.

58. Crime prevention was an issue of relevance in the items of the agenda of the Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders. It was specifically dealt with under the item on effective crime prevention: keeping pace with new developments. Crime prevention issues were raised in the discussion guide for the Tenth Congress (A/CONF.187/PM.1 and Add.1), and given prominence in reports of its regional preparatory meetings (A/CONF.187/RPM.1-4/1). It was also of considerable relevance in its four research workshops, on combating corruption, crimes related to the computer network, community involvement in crime prevention and women in the criminal justice system. It was a focus of attention in background papers and the report of the workshops.[15] It figured prominently in the Vienna Declaration on Crime and Justice: Meeting the Challenges of the Twenty-first Century, and is addressed by the Centre in its plans for implementation of the Declaration. Another major concern of the Tenth Congress was that crime prevention be balanced with human rights.

59. The Centre's global programmes against corruption, transnational organized crime and trafficking in human beings constitute important new programmatic tools aimed at crime prevention in specific areas. The various programmes that have been established within the Centre can use the set of policy tools offered by the United Nations to effect change at the local and field levels. Indeed, the global programmes, guided by the normative framework of the instruments, can bring to bear and help demonstrate their added, functional value in crime prevention across the areas covered. Their combination of policy-oriented, legal, advisory and field-level projects and other activities can prove useful in the fight against crime in all its forms under various legal systems.

60. The following States submitted replies to the second survey of the Secretary-General on elements of crime prevention: Canada, Czech Republic, Finland, Sweden and Turkey. The Office of the United Nations High Commissioner for Human Rights, the Economic Commission for Europe, the International Maritime Organization, the United Nations University and the Universal Postal Union submitted replies. The following organizations also submitted replies: African Peace Network; Afro-Asian Peoples' Solidarity Organization; Australian Institute of Criminology; Customs Cooperation Council (also known as the World Customs Organization); Friends World Committee for Consultation; National Institute of Justice of the United States Department of Justice; Organisation for Economic Cooperation and Development; European Commission; International Institute of Higher Studies in Criminal Sciences; International Criminal Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law in the Territory of The Former Yugoslavia since 1991; and International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994.

61. The comments received by the Secretary-General in 1999 from 26 States and five organizations, albeit representing a relatively low response rate, indicated support for the drafting of a new international instrument on crime prevention (E/CN.15/1999/3, paras. 39-57). Some of the comments received through the first survey of the Secretary-General on the matter were confirmed in the second survey. The draft elements annexed to Council resolution 1997/33 were seen as a good start, but as preliminary. The meaning of the term "prevention" suffered the same lack of clarity in the draft as functionally in its application across systems. The nature and extent of involvement and the role of various agencies in a prevention effort needed to be specified. The particular vulnerability of certain population groups such as women and children had to be addressed.

62. Since adoption of Council resolution 1997/33 calling for the possible drafting of a new instrument on crime prevention, two surveys have been conducted to ascertain the views of States and organizations as to the desirability and utility of such an instrument and the possible principles to be codified therein. Neither has yielded high response rates or led to conclusions on those matters. An expert group meeting had also been convened to discuss the issues involved. The Commission therefore had to take stock of the progress achieved, as described in the present report, and to decide whether the mandates and tasks remain relevant.

63. The Commission may wish to consider either abandoning the existing mandates, or renewing them and providing the necessary resources to fulfil them. The Commission may also wish to establish an ad hoc inter-sessional working group to consider the draft elements and to build consensus on the drafting of the provisions of the new instrument. Should the Commission so decide, the process of drafting and adopting the new international instrument could be carried out by the Commission itself.

2. Restorative justice and mediation

64. In accordance with Council resolutions 1996/26, 1998/21 and 2000/14, the Secretary-General surveyed the views of Governments and relevant entities on the drafting of a new international instrument on restorative justice and mediation. In particular, the Secretary-General requested their views on the desirability and feasibility of such instrument and on the principles to be codified therein, as well as their comments on the preliminary draft elements of a declaration of basic principles on the use of restorative justice programmes in criminal matters, annexed to Council resolution 2000/14, and any other relevant information that they wished to submit on the subject.

65. The following States have thus far submitted replies: Argentina, Australia, Belgium, Bolivia, Bulgaria, Canada, Costa Rica, Croatia, Denmark, Fiji, Germany, Ireland, Italy, Japan, Malaysia, Norway, New Zealand, Pakistan, Peru, Philippines, Norway, Qatar, Saudi Arabia, Sierra Leone, South Africa and Turkey. The Division for the Advancement of Women submitted a reply. Replies were also received from the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders and from the following organizations: Andean Commission of Jurists; Defence for Children International Movement; Friends World Service Committee for Consultation; International Centre for Criminal Law Reform and Criminal Justice Policy; International Criminal Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law in the Territory of the Former Yugoslavia since 1991; International Criminal Tribunal for the Prosecution of persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994; and Prison Fellowship International.

66. In accordance with Council resolution 2000/14, survey results will be analysed by and brought to the attention of an expert group meeting, should financial support be made available for that purpose. The report of the expert group meeting would then be presented to the Commission at its eleventh session. Rutgers University, in New Jersey (United States), has offered its cooperation and been in consultation with the Centre concerning the drafting of the instrument. The Government of Canada has expressed its interest in sponsoring and hosting an expert group meeting for that purpose. The meeting would bring together experts from various regions of the world and representatives of different legal systems. The proposed meeting might be held in Canada in October 2001.

67. The Commission may wish to consider formal proposals for the hosting and convening of the above-mentioned expert group meeting, without which the standard-setting activity may not be able to proceed as envisaged by the Council.

IV. Results of surveys on existing international instruments

68. The results of surveys on the following three international instruments are covered in the present section: Basic Principles on the Role of Lawyers; Guidelines on the Role of Prosecutors; and United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules).

A. Basic Principles on the Role of Lawyers

69. Thirty-eight Governments participated in the survey and completed the questionnaire on the use and application of the Basic Principles on the Role of Lawyers, conducted pursuant to Council resolutions 1993/34, 1997/32 and 1998/21. The following States submitted replies: Algeria, Antigua and Barbuda, Australia, Austria, Bahrain, Belarus, Cameroon, Chad, Czech Republic, Cyprus, Dominican Republic, Egypt, El Salvador, Estonia, Guatemala, Japan, Kazakhstan, Latvia, Lithuania, Malaysia, Malta, Mexico, Morocco, Myanmar, Norway, Peru, Poland, Portugal, Qatar, Republic of Korea, Senegal, Singapore, Slovakia, Slovenia, Spain, Sweden, Switzerland and United States.

70. Most Governments indicated that accused persons were entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and defend them in all stages of criminal proceedings. Most reported having established efficient procedures and responsive mechanisms for the effective and equal access to lawyers and legal services, on a non-discriminatory basis. With some exceptions (Antigua and Barbuda, Dominican Republic, Qatar, Sweden and Switzerland), respondents indicated that information on the important role of lawyers in protecting the fundamental freedoms of citizens was provided to the public, whether by Governments or professional associations of lawyers. Such information was provided only in some parts of the country in a number of States.

71. Nearly all respondents reported that persons were informed of their rights, including the right to legal assistance upon arrest or upon detention. Some replied additionally that information was provided upon apprehension, at a later stage, or at the request of the individuals concerned.

72. The time within which an arrested or detained person (with or without criminal charges) had access to a lawyer varied, between half an hour (Slovakia) and 48 hours. Australia reported that this information was provided as soon as practicable. And the United States reported that the precise statutory period varied across states, but the information was generally provided upon arrest, detention or first court appearance immediately following arrest. Several States (Chad, El Salvador, the Republic of Korea, Singapore, Spain and Sweden) reported no time limit in this regard.

73. Most respondents indicated that they ensured the provision of sufficient funding and other resources for legal services to indigenous and otherwise disadvantaged persons, as required. For some Governments, funding for such purposes was available to a certain extent. Two Governments (Cameroon and Chad) reported that the provision of legal services could not be ensured for lack of resources. The circumstances under which persons were entitled to the services of a lawyer without charge were regulated differently across respondent States. With several exceptions (Algeria, Dominican Republic, Estonia, Myanmar and Slovakia), respondents indicated the provision of such services. Completion of law school, college and bar or state examination and practical training to gain acceptance/recognition as a lawyer were required in most respondent States. The reported duties of lawyers towards clients included providing advice and information on legal rights, obligations, procedures etc., in so far as the latter are relevant to legal rights. Respondents indicated that those duties were included in all or in some cases.

74. Most Governments reported taking measures to ensure that lawyers were not under threat of sanction for action taken in the course of their professional duties, according to their standards and ethics. One Government (El Salvador) indicated that it does not ensure the above-mentioned conditions. Two Governments (Poland and Qatar) reported that lawyers assisting a client were identified with the cause of clients as a result of their functions as a lawyer. Some Governments (Chad, El Salvador, Guatemala, Latvia, Spain and United States) reported that a lawyer would be identified as such only in some cases.

75. With one exception (Latvia), respondents mentioned that there were no courts where the right to counsel was not recognized. Most respondents reported that lawyers enjoyed civil and penal immunity for relevant statements made in good faith in written or oral pleadings or in their professional appearances before a court, tribunal or other legal administrative authority. Most respondents reported that lawyers had access to all appropriate information, files and documents to enable them to provide effective legal assistance to their clients. Some indicated that, in practice, lawyers might not have access to all

information, files and documents required for each case.

76. Most respondents reported that lawyers had the right to participate in public discussion of matters concerning law, justice administration and the promotion and protection of human rights. That could be done without professional restriction by reason of lawful action and without limitation. Several respondents (Norway, Singapore and Qatar) indicated that lawyers had this right in their countries, but with certain limitations prescribed by law or other regulations. Some respondents (Australia, Austria, Myanmar and Slovakia) reported such limitations to be prescribed by a code of conduct or ethics.

77. All respondents reported that lawyers were free to form and join self-governing professional associations to represent their interests, promote their continuing education and training and protect their professional integrity, although some States had certain limitations prescribed by law or other regulations (Cameroon, Estonia, Latvia, Qatar, Republic of Korea and Slovakia), by a practical code of conduct (Myanmar) or by a code of conduct or ethics (Algeria and United States). Respondents indicated that the executive body of such professional associations were elected by the membership, with the exception of Myanmar, where the executive body is elected by the government authority. With some exceptions (Cameroon and El Salvador), responding States noted that those professional associations of lawyers co-operated with the Government to ensure that all persons had effective and equal access to legal services. Furthermore, lawyers were able, without improper interference, to counsel and assist their clients in accordance with the law and recognized professional standards and ethics.

78. Nearly all States reported the establishment of a code of professional conduct for lawyers. They stressed that lawyers, who in their professional capacity were charged or had a complaint made against them, had the right to a fair hearing and the right to be assisted by another lawyer of choice. Those charges or complaints were reportedly processed expeditiously and fairly.

B. Basic Principles on the Role of Prosecutors

79. Forty-eight Governments participated in the survey and completed the questionnaire on the use and application of the Basic Principles on the Role of Prosecutors, conducted pursuant to Council resolutions 1993/34 and 1997/32. The following States submitted replies: Algeria, Antigua and Barbuda, Argentina, Armenia, Australia, Belarus, Belgium, Brunei Darussalam, Cyprus, Czech Republic, Dominican Republic, El Salvador, Estonia, Greece, Guinea, Honduras, Iceland, Japan, Kazakhstan, Kyrgyzstan, Lebanon, Lesotho, Lithuania, Malaysia, Malta, Mauritius, Mexico, Myanmar, New Zealand, Nigeria, Pakistan, Peru, Poland, Portugal, Qatar, Singapore, Slovakia, Slovenia, Spain, South Africa, Sweden, Switzerland, Syrian Arab Republic, Thailand, Trinidad and Tobago, United States, Venezuela and Zambia.

80. Most respondents reported that completion of law school, college and a bar or state examination, as well as practical training, for acceptance/recognition as a prosecutor were required. One respondent (Dominican Republic) reported that completion of law school or a college was the basic legal qualification for a prosecutor. One respondent (Australia) reported the requirement of admission as barrister of supreme courts. Another respondent (Lithuania) required a master of law or bachelor's professional qualification degree in that regard. Most reported that there were separate training institutions or schools entrusted with the education and training of prosecutors. In some States (Guinea, Honduras, Mexico, Spain, South Africa and Zambia), bodies existed that were in charge of other training for government officials.

81. With some exceptions (Belarus, Belgium, Dominican Republic, Honduras, Lithuania, Qatar and Switzerland), all respondents indicated that prosecutors could perform their professional functions without exposure to civil, penal or other liability. Others (Portugal, Thailand and Venezuela) stressed that this was only in exceptional cases. Some respondents indicated that prosecutors had the right to participate in public discussions on matters of law, justice administration and human rights without limitation and without suffering professional disadvantage by reason of lawful actions. The majority reported limitations prescribed by law, code of conduct or ethics. In one

State (Singapore), approval of the Attorney-General was required, in another (Venezuela), a supervisor's authorization was required. In yet another State (Mauritius), no such right for the prosecutor existed. The same applied to the freedom of a prosecutor to form and join local, national or international organizations and to attend the meetings of those organizations without suffering professional disadvantage by reason of their membership in those organizations. One respondent (Mauritius) reported that no such right was given.

82. Nearly all respondents indicated that authorities offered physical protection to prosecutors when safety was threatened as a result of the discharge of prosecutorial functions. Some respondent States (the Czech Republic, Japan, Lesotho and Qatar) indicated that such protection was not provided. Most respondents reported that measures were also taken to ensure the personal safety and security not only of prosecutors, but also of their families. Most reported on bodies, for example, an internal personal management committee, a body independent of the prosecutor's office or others, such as a higher council of justice or a special tribunal, to ensure that the promotions were based on objective criteria.

83. With some exceptions (Algeria, Lebanon and Thailand), respondents stressed that the prosecutor's office was strictly separated from judicial functions. All respondents reported that the prosecutors perform their duties expeditiously, thus helping to ensure the smooth functioning of the criminal justice system and that, with one reported exception (Pakistan), the prosecutors kept matters in their possession confidential, unless the performance of duty or the needs of justice required otherwise. Codes of conduct, ethical guidelines and discretion governed this across States. The majority reported that, as prescribed by law, prosecutors protected the public interest, acted with objectivity and took proper account of the suspect and of the victim.

84. Nearly all respondents reported that they required prosecutors to refrain from initiating or continuing prosecution if an impartial investigation showed that the charge is unfounded. Some respondents (Algeria, Belgium, Estonia, Guinea, Honduras, Malta, Mauritius and Sweden) reported exceptions, indicating that it depended on the decision of the individual prosecutor. No respondent reported that prosecutors were allowed to use evidence against suspects that they knew or believed on reasonable grounds was obtained through recourse to unlawful methods, constituting a grave violation of a suspect's human rights. One respondent (Nigeria) indicated relevant evidence as a strong point for admissibility, although evidence obtained through human rights violations like torture were excluded.

85. Most indicated that prosecutors were vested with discretionary functions including institution or waiver of prosecution. Some respondents reported that discretionary prosecutorial functions were not of a permanent, long-standing nature, but rather existed on a case-by-case basis (Algeria, Mauritius, Myanmar and Qatar). A number of respondents (Argentina, Belarus, Czech Republic, El Salvador, Estonia, Poland, Portugal and Syrian Arab Republic) reported that prosecutors were not vested with discretionary power or authority at all. Most respondent States indicated that prosecutorial discretionary functions were checked or controlled by an internal supervisory system. Some States (Mexico, Peru, Sweden, Switzerland and United States) also had a process of review through individual claims. One respondent (Guinea) reported that no such control mechanisms existed.

86. Several respondents (Algeria, Estonia, Greece, Malta, Portugal, Sweden and Thailand) reported prosecutors could not waive prosecution; others reported they may waive prosecution if alternatives to conflict resolution were successful (for example, no strong public interest to prosecute; or the victim or the victim's family did not elect to prosecute). With some exceptions (Algeria, Belgium, Estonia, Greece, Kazakhstan, Malta, Pakistan, Spain, Sweden, Syrian Arab Republic and Thailand), the same applied to the question of whether prosecutors could discontinue proceedings conditionally or unconditionally. All respondents reported that prosecutors and the police shared information about cases, whether in all cases, with certain exceptions or only in exceptional cases.

C. United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules)

87. Thirty-eight Governments participated in the survey and completed the questionnaire on the use and application of the United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules),

conducted pursuant to Council resolutions 1993/34, 1997/32 and 1998/21. The following States submitted replies: Algeria, Antigua and Barbuda, Australia, Austria, Bahrain, Belarus, Belgium, Bolivia, Canada, Cuba, Cyprus, Estonia, Greece, Iceland, Italy, Japan, Kuwait, Latvia, Malta, Mauritius, Mexico, Morocco, Myanmar, Niger, Norway, Peru, Poland, Portugal, Qatar, Republic of Korea, Rwanda, Saudi Arabia, Senegal, Slovakia, Slovenia, Sweden, Thailand, Turkey, United Arab Emirates, United Kingdom and United States.

88. The Tokyo Rules were recognized as important in the administration of justice by most respondent Governments. Most respondents reported the wide distribution of the Tokyo Rules to officials across sectors. There were indications, however, that many practitioners concerned with criminal justice administration were still not aware of the Tokyo Rules. A number of respondents reported that they had translated the Tokyo Rules into local languages, while more than 10 countries have not had it translated when their official languages are not one of the United Nations official languages.

89. Most respondents indicated that the aim of application of non-custodial measures was to reduce the use of imprisonment and rationalize criminal justice policies. Reduction of the length of imprisonment through the application of non custodial measures was indicated by about half of the respondents. Many respondents took non-custodial measures to promote offender reintegration into society. Other aims indicated by respondents included: imposition of an appropriate punishment to offenders (Antigua and Barbuda); reduction of the harm of incarceration (Italy); avoidance of mixing first-time offenders with recidivist offenders in prison (Kuwait). All respondents reported their taking into account the observance of human rights, requirements of social justice, and offender rehabilitation in their use of non-custodial measures.

90. As to the stages when non-custodial measures are imposed, most indicated that many of the measures are imposed by the sentencing authorities. In addition to the measures enumerated in the questionnaire, two respondents (Poland and Slovenia) raised prohibition of approaching a specific place or person as other measures used. In the use of non-custodial measures, most respondents took into account the following factors: nature and the gravity of the offence; age; offender personality and background; protection of society; and victim rights and well-being. About half of the respondents considered also the gender of the offender. Two thirds considered the principle of minimum intervention. One Government (the United States) raised community ties.

91. Most respondents prescribed introduction and use of non-custodial measures by law or other regulations. But not all respondents reported having provision for breach of non-custodial measures. Generally, the offender had the right to have the decision reviewed by judicial or other competent independent authority at the time of imposition of a non-custodial measure or on post-sentencing disposition. Two respondent Governments (Kuwait and Thailand) reported the offender not to be granted such a right. With regard to the accessibility to personal records, many respondents reported permitting offenders access to records with restrictions. When a restriction was imposed, several respondents (Malta, Sweden and United Kingdom) cited the case when victims or other third parties could be endangered with offender access. At the pre-trial stage, half of the respondents granted powers to the police to discharge the offender. Remaining respondents indicated that the police have the discretion not to file a report. As to prosecutors, more respondent Governments empowered them to discharge the offender. Most indicated that detention pending trial was used as a measure of last resort. In cases where pre-trial detention was used, suspects had the right to appeal to a judicial or other competent independent authority in all respondent States.

92. The judicial authority made use of a social inquiry report or a pre-sentence report prepared by a competent, authorized official or agency in many respondent States. Yet nearly half of the respondent Governments indicated that such a report was available only in exceptional cases. In several States (Bolivia, Italy and Latvia), the report was not available to judicial authorities. In respect of when judicial authorities were obliged to request such a report, many respondent Governments raised the case of juveniles. Others indicated the case of serious offences (Algeria, Cyprus, Niger and United States); offences involving the offender's mental capacity (Republic of Korea and United States); offences committed within the family (Saudi Arabia); and environmental offences (Peru). Two respondents (Cuba and Iceland) indicated that the judicial authority was obliged to request the report in

all cases. The report prepared was available to the accused in many respondent States.

93. Most respondents reported having a system of periodic or non-periodic review of the supervision. Two respondents (Niger and Rwanda) indicated that such a review system had not been established. More than half of the respondents afforded offenders the possibility of expressing individual views regarding revision of supervision at the time of review. A number of respondents indicated that offenders did not have such opportunity at that time. During supervision, most provided offenders with psychological, social and material assistance as well as the opportunities to establish or strengthen communal ties. With one exception (Bahrain), all respondents indicated that competent authorities could determine conditions to be observed by the offenders concerned and considered it necessary that those conditions take into account societal needs and offender and victim rights. Conditions imposed on offenders were explained either orally or in writing at the beginning of the application of non-custodial measures. About half of the respondents indicated that breach of the condition result in either a modification or a revocation of the non-custodial measures. But some respondents indicated that breach of conditions automatically resulted in imposition of a term of imprisonment.

94. As to the treatment schemes provided to the offender, many considered casework as effective in all or almost all cases. Other schemes such as a residential programme, specialized treatment and group therapy were considered effective in a few cases. With regard to staff who apply non-custodial measures, although many indicated that they provided professional training in all or almost all cases, some indicated that they provided such training either in exceptional cases or in no case. In many, the community played some part in the application of non-custodial measures. Most respondents indicated that community involvement needs to be enhanced. Many respondents indicated receipt of support from public-sector and voluntary organizations when they carry out non-custodial measures, and about half of the Governments also invited the private sector to provide support. Where the Government involved volunteers, they were carefully screened, and volunteers were recruited and trained to provide support and counselling. Many respondents reported on research initiatives and outcomes with regard to the application of non-custodial measures. Evaluation of existing systems of non-custodial measures was being carried out in half of the respondent countries. All respondents, however, recognized its value in that regard.

D. Conclusions on the survey results regarding the three international instruments

95. The three instruments were fairly well recognized in most respondent States and the majority of the measures embodied therein were reported to have been already incorporated into law, rules or other regulations in the respective jurisdictions. At the same time, there was a number of measures that still needed to be taken by States to more fully align national systems across instruments. Greater distribution of the instruments to the relevant professions in the respective countries seems to be called for. A majority of the survey respondents indicated a need for technical assistance in various areas covered by the instruments (for example, training, inter-agency coordination and reviewing the systems vis-à-vis departure from the provisions of the instruments.

96. Respondents across the three surveys mentioned the lack of trained personnel, appropriate support structures and adequate funds. Generally, the problems of lack of appropriate personnel and support structure were raised by developing countries. Technical assistance should be effective for these cases. The problem of lack of adequate funds was raised not only by developing and developed countries. The reasons might be different in each country, but by promoting the application of the Tokyo Rules, prison overcrowding would be decreased and the financial burdens of keeping inmates in prisons would be reduced. It is recommended that each Government review the allocation of funds for alternatives in the criminal justice systems.

97. With respect to the Tokyo Rules, a large number of respondents expressed an interest in reducing the incidence of prison-related problems like prison overcrowding and in enhancing community-based approaches promoted in the Rules. Regarding the role of lawyers, a number of Governments admitted that they sought improvement in areas having to do with the protection of lawyers from the repercussions of defending and being associated with a client's cause in the discharge of official functions. Another

problematic aspect seemed to have been where lawyers did not have proper or full access to all information needed for cases. A serious problem seemed to have been the lack in many States of a special institute, training school or training section for the education or training of prosecutors. A number of States lacked a body to ensure that the promotion of prosecutors was based on objective criteria.

V. Concluding remarks

98. The Commission might wish to reconsider its approach and take stock of what has been accomplished thus far in the information-gathering process. As many as 12 mandated surveys have been conducted over a two-year period alone (1999-2000). The number of responses for each survey has been fairly adequate, with some surveys (for example, on the United Nations Declaration on Crime and Public Security, the International Code of Conduct for Public Officials, and the United Nations Declaration against Corruption and Bribery in International Commercial Transactions) already yielding comparatively higher response results. The amount of information gathered has been substantial. However, the methodological design, the mandated preparation of reports over three sessions alone (eighth to the tenth) and the effort of responding to questionnaires on the part of Member States might be seen as cumbersome.

99. It might be necessary to weigh the cost-benefit value of the resources, time and energy expended in the exercises against the output. It might appear opportune to consider whether the current system has exceeded its utility. All mandated surveys are nearing completion and will have been reported on by the eleventh session. There remains only one instrument or questionnaire and survey to be conducted, that on penal reform. Discontinuation of the current information-gathering system would make it possible to devote time and resources to promoting interfaces between the body of standards and norms, non-binding instruments, and the new binding instruments (conventions and protocols), as outlined above. Interfacing and mutual reinforcement between the body of non-binding and binding instruments in the field of crime prevention and criminal justice and in other relevant fields of United Nations competence and activity (for example, human rights, children's rights, women's rights, refugees and labour) are essential to enhance the impact of the United Nations. This has to do not only with the development and advancement of an integrated United Nations criminal policy, but also with the use, application and impact of the relevant instruments and the consistent dissemination of information about United Nations policy and standards to the field.

100. Indeed, non-binding instrumentation has invited reform and brought about sweeping changes over the years, across legal systems, so as to upgrade and strengthen the capacity of criminal justice systems and professionals to deter crime in accordance with United Nations standards. This process has created a normative support system and framework within which to sustain and facilitate implementation of binding instruments, in particular, the United Nations Convention against Transnational Organized Crime and the protocols thereto. In that connection, the Commission may wish to identify new priorities, for example, in the gathering and analysis of data, with a view to preparing for implementation of the binding instruments.

101. The Commission might wish to assess the mandated approach and modus operandi for standard-setting and monitoring, as well as the outcome and impact of those processes thus far. The Commission might wish in particular to consider the number of reports required under the standing item of its agenda on standards and norms.

102. In that regard, the focus of attention might be given, in the first instance, to consolidation of mandated work and reporting obligations, inclusive of surveys, and to keeping them to a strict minimum. One possible option would be to request consolidated reporting obligations, in terms of selecting the clusters of standards and norms (outlined above) deemed most in need of special attention. In that scenario, follow-up activities would be focused on clusters of cross-cutting issues, areas, sectors or professions, rather than on individual instruments. Such an approach would also allow scope for more comprehensive gathering of data on both non-binding and binding instruments. The Secretariat might be requested to gather information on the use and application of norms and standards, including relevant provisions in the United Nations Convention against Transnational Organized Crime and the protocols thereto, concerning, for example, victims, prosecution or sanctioning.

Notes

[1] *Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August-7 September 1990: report prepared by the Secretariat* (United Nations publication, Sales No. E.91.IV.2), chap. I, sect. B.3, annex.

[2] *Eighth United Nations Congress ...*, chap. I, sect. C.26, annex.

[3] *Official Records of the Economic and Social Council, 2000, Supplement No. 10* (E/2000/30), chap. V, para. 37.

[4] Ibid.

[5] These included General Assembly resolutions 46/152, of 18 December 1991, and 48/137, of 20 December 1993, and Council resolutions 1975 (LIV), of 16 May 1973, 1990/51, of 24 July 1990, 1992/22, of 30 July 1992, 1993/34, of 27 July 1993, 1994/18, of 25 July 1994, 1995/13 and 1995/41, of 24 July 1995, 1996/16, of 23 July 1996, 1997/32 and 1997/36, of 21 July 1997, and 1998/21, of 28 July 1998.

[6] They further indicated the work to be undertaken by the Secretary-General in that regard and addressed ways and means of improving coordination and other procedures with all those concerned (for example, 1997/30, of 21 July 1997, 1997/32 and 1993/34).

[7] *Compendium of United Nations Standards and Norms in Crime Prevention and Criminal Justice* (United Nations publication, Sales No. E.92.IV.1).

[8] See *Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Vienna, 10-17 April 2000: report prepared by the Secretariat* (United Nations publication, Sales No. E.00.IV.8), chap. I.

[9] See the following paragraphs of the Declaration: 22, on effective implementation of United Nations standards and norms; 11 and 12, on gender mainstreaming; 20 and 21, on racism and related forms of intolerance; 24, on juvenile justice reform; 26, on prison reform; 27, on victims; and 28, on restorative justice.

[10] See *Official Records of the Economic and Social Council ...*, chap. VI, para. 49.

[11] *Report of the World Conference to Review and Appraise the Achievements of the United Nations Decade for Women: Equality, Development and Peace, Nairobi, 15-26 July 1985* (United Nations publication, Sales No. E.85.IV.10), chap. I, sect. A.

[12] A/CONF.177/20, chap. I, resolution 1, annex I.

[13] See *First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Geneva, 22 August-3 September 1955: report prepared by the Secretariat* (United Nations publication, Sales No. 1956.IV.4), annex I.A.

[14] See *Compendium of United Nations Standards and Norms ...*, part one, sect. C, p. 105.

[15] See A/CONF.187/15, chap. VI.

Annex

United Nations surveys, 1999-2001, by international instrument or subject matter

Questionnaire on relevant instrument or subject matter	*Governments replying to questionnaire*	*Number of Governments submitting replies*
United Nations Declaration on Crime and Public Security	Algeria, Angola, Australia, Austria, Belarus, Bulgaria, Croatia, Czech Republic, Estonia, Finland, Germany, Greece, Iceland, Iraq, Ireland, Japan, Jordan, Kuwait, Madagascar, Mongolia, Morocco, New Zealand, Norway, Philippines, Poland, Portugal, Qatar, Republic of Korea, Slovakia, South Africa, Swaziland, Sweden, Syrian Arab Republic, Tajikistan, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland and United States of America	37
United Nations Declaration against Corruption and Bribery in International Commercial Transactions	Algeria, Argentina, Austria, Belarus, Brazil, Brunei Darussalam, Bulgaria, Cameroon, Canada, Colombia, Costa Rica, Croatia, Czech Republic, Germany, Greece, Guatemala, Guyana, Iraq, Italy, Japan, Kazakhstan, Lebanon, Lithuania, Luxembourg, Mali, Malta, Mauritius, Myanmar, New Zealand, Niger, Nigeria, Norway, Panama, Peru, Poland, Saudi Arabia, Singapore, Slovenia, South Africa, Sweden, Switzerland, The former Yugoslav Republic of Macedonia, United Arab Emirates, United Kingdom and Yemen	45
International Code of Conduct for Public Officials	Algeria, Angola, Antigua and Barbuda, Argentina, Bangladesh, Belarus, Belgium, Bolivia, Brunei Darussalam, Canada, Central African Republic, Chile, Colombia, Congo, Costa Rica, Cuba, Cyprus, Czech Republic, Dominican Republic, Ecuador, Egypt, El Salvador, Finland, Germany, Greece, Guatemala, Guyana, Haiti, Hungary, Iraq, Italy, Japan, Lebanon, Lithuania, Malaysia, Mali, Malta, Mexico, Myanmar, New Zealand, Norway, Panama, Peru, Poland, Qatar, Republic of Korea, Saudi Arabia, Slovenia, South Africa, Sweden, Switzerland, Thailand and Uruguay	53

Questionnaire on relevant instrument or subject matter	*Governments replying to questionnaire*	*Number of Governments submitting replies*
Capital punishment	Antigua and Barbuda, Argentina, Armenia, Australia, Austria, Bahrain, Barbados, Belarus, Belgium, Brazil, Bulgaria, Canada, Cameroon, Chile, Colombia, Comoros, Croatia, Cyprus, Czech Republic, Denmark, Djibouti, Ecuador, El Salvador, Eritrea, Estonia, Fiji, Finland, Germany, Greece, Hungary, Iceland, Indonesia, Iraq, Ireland, Italy, Japan, Kazakhstan, Lebanon, Liechtenstein, Lithuania, Malta, Mexico, Morocco, Mozambique, Myanmar, New Zealand, Niger, Norway, Peru, Poland, Rwanda, Slovakia, Slovenia, Spain, Sweden, Switzerland, Thailand, The former Yugoslav Republic of Macedonia, Togo, Turkey, United Kingdom, United States and Uruguay	63
Basic Principles on the Role of Lawyers	Algeria, Antigua and Barbuda, Australia, Austria, Bahrain, Belarus, Cameroon, Chad, Czech Republic, Cyprus, Dominican Republic, Egypt, El Salvador, Estonia, Guatemala, Japan, Kazakhstan, Latvia, Lithuania, Malaysia, Malta, Mexico, Morocco, Myanmar, Norway, Peru, Poland, Portugal, Qatar, Republic of Korea, Senegal, Singapore, Slovakia, Slovenia, Spain, Sweden, Switzerland and United States	38
Basic Principles on the Role of Prosecutors	Algeria, Antigua and Barbuda, Argentina, Armenia, Australia, Belarus, Belgium, Brunei Darussalam, Cyprus, Czech Republic, Dominican Republic, El Salvador, Estonia, Greece, Guinea, Honduras, Iceland, Japan, Kazakhstan, Kyrgyzstan, Lebanon, Lesotho, Lithuania, Malaysia, Malta, Mauritius, Mexico, Myanmar, New Zealand, Nigeria, Pakistan, Peru, Poland, Portugal, Qatar, Singapore, Slovakia, Slovenia, Spain, South Africa, Sweden, Switzerland, Syrian Arab Republic, Thailand, Trinidad and Tobago, United States, Venezuela and Zambia	48
United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules)	Algeria, Antigua and Barbuda, Australia, Austria, Bahrain, Belarus, Belgium, Bolivia, Canada, Cuba, Cyprus, Estonia, Greece, Iceland, Italy, Japan, Kuwait, Latvia, Malta, Mauritius, Mexico, Morocco, Myanmar, Niger, Norway, Peru, Poland, Portugal, Qatar, Republic of Korea, Rwanda, Saudi Arabia, Senegal, Slovakia, Slovenia, Sweden, Thailand, Turkey, United Arab Emirates, United Kingdom and United States	41

Questionnaire on relevant instrument or subject matter	*Governments replying to questionnaire*	*Number of Governments submitting replies*
Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice	Argentina, Azerbaijan, Belarus, Cameroon, Costa Rica, Czech Republic, France, Germany, Japan, Malta, Peru, Philippines, Qatar, Spain, Sweden and United States	16
Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power	Belarus, Denmark, Germany, Ireland, Malta, Mexico, Peru, Qatar, Sweden and Turkey	10
Elements of responsible crime prevention	Canada, Czech Republic, Finland, Sweden and Turkey	5
Restorative justice and mediation	Argentina, Australia, Belgium, Bolivia, Bulgaria, Canada, Costa Rica, Croatia, Denmark, Fiji, Germany, Ireland, Italy, Japan, Malaysia, Norway, New Zealand, Pakistan, Peru, Philippines, Qatar, Sierra Leone, South Africa, Turkey and Saudi Arabia	25
Juvenile justice reform	Replies submitted by organizations only	–